

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MAXWELL KADEL, *et al.*,)
Plaintiffs,)
v.)
DALE FOLWELL, in his official)
capacity as State Treasurer of)
North Carolina, *et al.*,)
Defendants.)

Civil Action No.
1:19-cv-272-LCB-LPA

**CONSENT MOTION TO EXTEND TWO PRETRIAL
SCHEDULING ORDER DEADLINES**

Pursuant to Federal Rule of Civil Procedure 16(b)(4) and Local Civil Rule 26.1(d), and for the reasons discussed below, Defendants North Carolina State Health Plan for Teachers and State Employees, Plan Administrator Dee Jones, and North Carolina Treasure Dale Folwell (collectively the “Plan Defendants”) move for an extension of two expert deposition deadlines as currently set forth in the scheduling order. All parties consent to the granting of the requested relief. In support of this motion, Plan Defendants show as follows:

Procedural Background

1. On March 11, 2019, Plaintiffs filed their first Complaint. [D.E. 1]
2. On July 29, 2020, the original Parties filed their joint report of the initial attorneys’ conference pursuant to Rule 26(f). [D.E. 61]

3. On August 13, 2020, the Court adopted the original Parties' joint report including the scheduling deadlines set forth in the report.

4. On August 3, 2020, Plaintiffs filed a motion to amend the complaint seeking to add the NC Department of Public Safety ("DPS") as a party.

5. On March 5, 2021, the Court granted Plaintiffs' motion to amend the complaint, [D.E. 74] and Plaintiffs' First Amended Complaint was filed on March 9, 2021. [D.E. 75]

6. The current deadline for the close of all Discovery is September 30, 2021.

7. The parties have worked together to schedule and take more than 20 depositions thus far, with two additional depositions scheduled for September 29th and September 30th. As a part of this effort, the parties worked together to schedule the expert witness depositions of Dr. Randi C. Ettner for September 2, 2021, and of Dr. Paul McHugh on September 8, 2021.

8. Before Dr. Randi Ettner's deposition, the witness suffered a serious eye injury that required immediate surgery and has compromised her vision. Accordingly, the parties agreed to postpone Dr. Ettner's deposition to allow for her recovery and her vision to improve sufficient for her to participate in a deposition. The parties expect that Dr. Ettner can be deposed by October 22, 2021.

8. Dr. Paul McHugh's deposition began on September 8, 2021. After several hours, the parties agreed to continue the remainder of his deposition to a mutually agreeable date -- September 16, 2021. However, before his deposition could resume, Dr. McHugh suffered a cardiac event. The treatment and recovery from which prevents the resumption of his deposition before September 30, 2021. The parties expect that Dr. McHugh's deposition can be completed by October 15, 2021.

9. This extension request should have no impact on the projected start of the trial, currently set for July 2022.

10. The amended schedule proposed by the parties is as follows:

	Current Deadline	Amended Deadline
Event	Date	Date
Continued Deposition of Dr. Paul McHugh	September 30, 2021	October 15, 2021
Deposition of Dr. Randi Ettner	September 30, 2021	October 22, 2021

WHEREFORE Plan Defendants respectfully requests that the Court modify the scheduling order in accordance with the deadlines set forth above. A Proposed Order is attached.

Respectfully submitted, this the 27th day of September, 2021.

/s/ John G. Knepper

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